



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 2002

[Docket No. FR-6048-F-01]

#### **Streamlining the Office of Inspector General's Freedom of Information Act Regulations and Implementing the FOIA Improvement Act of 2016**

**AGENCY:** Office of Inspector General, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Freedom of Information Act (FOIA) regulations for the U.S. Department of Housing and Urban Development (HUD) Office of Inspector General (OIG) to align with HUD's FOIA regulations, to implement the FOIA Improvement Act of 2016, and to explain current OIG policies and practices with respect to FOIA.

**DATES:** Effective: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE  
FEDERAL REGISTER].**

**FOR FURTHER INFORMATION CONTACT:** Maura Malone; Deputy Counsel to the Inspector General; Department of Housing and Urban Development; 451 Seventh Street, SW, Room 8260; Washington, DC 20410; 202-708-1613 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In July 1967, HUD issued regulations at 24 CFR part 15 containing the policies and procedures governing public access to HUD records under the Freedom of Information Act (FOIA) (5

U.S.C. 552) (Pub. L. No. 89-487, approved July 4, 1966). The Inspector General Act of 1978 (5 U.S.C. App. 3) was enacted to “create independent and objective units” to perform investigative and monitoring functions within Executive agencies of the Federal Government, including HUD. HUD’s regulations regarding public access to HUD records under the FOIA are at 24 CFR part 15. To further its independence, OIG officials, as opposed to HUD officials, make determinations concerning the release of OIG records. In 1984, the HUD OIG published 24 CFR part 2002, which explains the procedures for requesting information from the OIG under the FOIA. Part 2002 cross referenced several of HUD’s regulations at 24 CFR part 15. The OIG last amended its FOIA regulations in July 2002 (67 FR 47216). Subsequently, HUD made several changes to its FOIA regulation, which has affected some of the regulations referenced in part 2002 (80 FR 49140).

On June 30, 2016, the President signed into law the FOIA Improvement Act of 2016 (2016 Act) (Pub. L. No. 114-185). The 2016 Act addresses a range of procedural issues, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that agencies provide dispute resolution services at various times throughout the FOIA process. The 2016 Act also codifies a “foreseeable harm” standard, amends a FOIA disclosure exemption, creates a new Chief FOIA Officer Council within the Executive Branch, and adds two new elements to agency Annual FOIA Reports. The amendments apply to any request made after the date of enactment. The 2016 Act also requires agencies to review and issue updated regulations on procedures for the disclosure of records under FOIA, in accordance with the amendments made by the 2016 Act. On January 12, 2017, HUD issued a direct final rule amending its FOIA regulation to reflect the 2016 Act amendments (82 FR 3619).

## **II. Changes Made in This Final Rule**

In this final rule, the HUD OIG seeks to amend its FOIA regulations to address the 2016 Act changes, conform its regulations with HUD's, and simplify its regulations to make the process clearer to the requesting public. The following is an overview of nontechnical changes made in this final rule:

### *Section 2002.3 OIG's overall policy concerning disclosable records*

The OIG adds the title and contact information for the FOIA Public Liaison that is available to answer questions for FOIA requesters, as required by the 2016 Act.

### *Section 2002.5 How to make a request for OIG records; records produced*

This section is updated to provide for requests to be made in writing, which aligns with HUD's FOIA regulations, and provides that such requests may be made using the OIG public website. The regulations also reflect the requirement that the requestor, when requesting records on themselves, may be required to identify themselves when making a request or such a request may be found insufficient and closed. Lastly, the OIG also clarifies that for purposes of reasonably describing a record, a more specific FOIA request will likely result in the OIG locating the records requested. The OIG notes that a request for "any and all" records over an extended period of time may be rejected for not reasonably describing the record.

### *Section 2002.7 OIG processing of requests, multi-tracking, and expedited processing*

This rule provides the tracking process for requests that qualify as unusual circumstance under the definition at 5 U.S.C. 552(a)(6)(B)(iii). In adding the definition, the OIG adds an example of audit work papers under the definition of "unusual circumstances" to clarify that requests for audit work papers usually qualify as unusual circumstances and take longer than 20 working days to process because work papers related to an audit, if it is accepted for processing as a proper request, generally take weeks or months to process.

*Section 2002.9 Proactive disclosures of records*

The 2016 Act requires agencies to “make available for public inspection in an electronic format” records that, because of their subject matter, the agency determines “have become or are likely to become the subject of subsequent requests for substantially the same records,” or that have been requested 3 or more times. The 2016 Act also adds new reporting requirements for agencies by requiring that agencies submit an Annual FOIA Report, which covers the preceding fiscal year, to be submitted to the Director of the Office of Government Information Services.<sup>1</sup> The raw statistical data used in each report must be made available without charge, license, or registration requirement; in an aggregated, searchable format, and in a format that may be downloaded in bulk. Both the report and the raw statistical data used in the report must be made available for public inspection in an electronic format. In response, the OIG is amending § 2002.9 to comply with these requirements.

*Section 2002.13 Fee schedule, advance payment, interest charges, and waiving or reducing fees*

This rule amends § 2002.13 to adopt HUD’s fee schedule and policies in their entirety through cross-reference to HUD’s FOIA regulation at § 15.106. Incorporated in HUD’s regulations are the 2016 Act new provisions regarding agencies’ ability to assess search and duplication fees. First, the 2016 Act provides that an agency shall not assess any search fees, or in some cases, duplication fees, if the agency has failed to comply with any time limit described at 5 U.S.C. 552(a)(6), which are set

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<sup>1</sup> Under FOIA, agencies are also required to submit an Annual FOIA Report to the Attorney General of the United States (5 U.S.C. 552(e)(1)).

out in OIG's FOIA regulations at § 2002.15, with limited exceptions. Second, if an agency determines that unusual circumstances apply to the processing of a FOIA request, and the agency has provided timely written notice to the requester, then a delayed response time is excused for an additional 10 days; however, if the agency fails to comply with the extended time limit, it may not charge search fees, or, in some cases, duplication fees, with limited exceptions. Third, the 2016 Act provides an exception allowing agencies to charge search fees, or in some cases, duplication fees, if unusual circumstances apply, more than 5,000 pages are necessary to respond to the request, timely written notice has been made to the requester, and the agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request. Fourth, the 2016 Act maintains that if a court determines that "exceptional circumstances" exist, as defined in 5 U.S.C. 552(a)(6)(C), the agency's failure to comply with a time limit "shall be excused for the length of time provided by the court order."

As for the definition of "commercial requesters" adopted from HUD's regulation, the OIG clarifies that as a policy, it will treat owners of websites that contain advertisements, or that charge fees in any way, to be "commercial requesters," if they do not use editorial skills to turn the posted materials into a distinct work, or provide significant editorial comments. Owners of websites that do not contain advertisements, but that post requested documents without altering such documents or providing editorial comments, will be considered "other requesters," unless the websites are used to advertise or publicize the skills or expertise of the owners.

This rule also removes OIG's existing FOIA regulations at § 2002.13 because the collecting of interest charges on any unpaid bills is consistent with HUD's FOIA regulations at § 15.106(g).

#### *Section 2002.15 Time limitations*

When a FOIA request involves “unusual circumstances,” agencies have long been required to provide written notice to the requester, and in those instances where an extension of time of more than 10 working days is specified, agencies have been required to provide the requester with an opportunity to limit the scope of the request so that it can be processed more quickly or to arrange an alternative time to respond. The 2016 Act adds an additional requirement that when unusual circumstances exist and an agency extends the time limits by more than 10 additional working days, in the written notice to the requester they must notify the requester of their right to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services. To address this requirement, the OIG is revising § 2002.15 to incorporate the change enacted by the 2016 Act.

The OIG is also using this final rule to update several specific provisions of § 2002.15 to more accurately reflect the statutory language in 5 U.S.C. 552(a)(6)(A)(i). First, the OIG is amending § 2002.15(a) to state that OIG will generally “make a determination whether to comply with a FOIA request within 20 working days.” Second, the OIG is amending the provision that addresses when OIG may extend the time periods for processing a FOIA request, to remove the sentence that limits extensions to 10 working days. The OIG is removing this language as inconsistent with the plain reading of the statute, the logic of the rest of the language in § 2002.15, and Department of Justice

guidance.<sup>2</sup> Finally, in accordance with 5 U.S.C. 552(a)(6)(B)(ii), the OIG is updating § 2002.15 to include the provision that the OIG shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the OIG.

When an agency makes a determination regarding whether to comply with a FOIA request, the 2016 Act provides that the agency is required to immediately notify the requester of such determination and the reasons therefore, and notify the requester that they have a right to seek assistance from the agency's FOIA Public Liaison. For adverse determinations, the 2016 Act requires that agencies afford the requester no less than 90 days from the date of the adverse determination on the request to file an appeal. In addition, the 2016 Act requires that agencies notify the requester that they may seek dispute resolution services from the FOIA Public Liaison or from the Office of Government Information Services. Consistent with this requirement, the OIG has revised § 2002.15 to provide that, once OIG makes a determination regarding compliance, the OIG will immediately notify the requester of such determination, the reasons therefore, and their right to seek assistance from the FOIA Public Liaison.

*Section 2002.19 Authority to deny requests for records and form of denial, exemptions, and exclusions*

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<sup>2</sup> See Department of Justice Guide to the Freedom of Information Act, <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

The 2016 Act requires that agencies withhold information under FOIA “only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption” or if disclosure is prohibited by law. The 2016 Act further directs agencies to consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible, and to take reasonable steps necessary to segregate and release nonexempt information. The 2016 Act does not require disclosure of information that is otherwise prohibited from disclosure by law or otherwise exempted from disclosure under Exemption 3.

Consistent with these changes, the OIG is amending § 2002.19 to provide that the OIG shall withhold information only if it is reasonably foreseeable that disclosure would harm an interest protected by an exemption, or if disclosure is prohibited by law. The OIG will also consider whether partial disclosure of information is possible if it determines that a full disclosure of a requested record is not possible and will take reasonable steps necessary to segregate and release nonexempt information.

In addition, the 2016 Act amends Exemption 5 of FOIA to provide that the deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested. In accordance with the 2016 Act, the OIG is revising § 2002.19 to state that the deliberative process privilege “shall not apply to records created 25 years or more before the date on which the records were requested.”

For adverse determinations, the OIG is amending § 2002.19 to provide that the OIG will notify the requester of their right to file an appeal no less than 90 days after the date of receiving the adverse determination. Finally, the OIG is amending § 2002.19 to provide that the OIG will notify the requester of their right to seek dispute resolution services from the FOIA Public Liaison or from the Office of Government Information Services.



### *Section 2002.23 Administrative review*

The OIG amends § 2002.23, consistent with the 2016 Act to provide that the OIG will notify requesters of dispute resolution services in its FOIA appeal determination response letter and that they have 90 days to seek an appeal. The OIG is also amending § 2002.23 to clarify that appeals may be submitted electronically and lists the items that a requestor should include in an appeal, such as a copy of the original request and the written denial.

### **III. Justification for Final Rulemaking**

In general, OIG publishes a rule for public comment before issuing a rule for effect, in accordance with OIG's regulations on rulemaking at 24 CFR part 10. Section 10.1, however, provides an exception from that general rule where OIG finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is “impracticable, unnecessary or contrary to the public interest.”

The OIG finds that good cause exists to publish this rule for effect without first soliciting public comment because prior public comment is unnecessary. This final rule follows the statutory directive in section 3 of the 2016 Act, which requires agencies to review and issue updated regulations on procedures for the disclosure of records under FOIA, in accordance with the amendments made by the 2016 Act. The 2016 Act codifies a number of transparency and openness principles and enacts a number of procedural requirements, including requiring that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that they provide dispute resolution services at various times throughout FOIA process. This final rule reflects the changes required by the 2016 Act. Additionally, this final rule makes technical amendments to align the OIG's FOIA regulation with HUD's FOIA regulation at 24 CFR part 15 and clarifies current OIG FOIA procedures to streamline and simplify the process of filing FOIA requests.

#### **IV. Findings and Certifications**

##### *Executive Order 12866 and Executive Order 13563*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approach that maximizes net benefits. This final rule incorporates changes enacted by the 2016 Act and makes other minor procedural changes that align this OIG regulation to HUD's FOIA regulation at 24 CFR part 15. As a result, this rule was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by OMB.

##### *Environmental Review*

This final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). The revision of the FOIA-related provisions of 24 CFR part 2002 falls within the exclusion provided by 24 CFR 50.19(c)(1), in that it does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy.

##### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule contains no anti-competitive discriminatory aspects with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

##### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled “Federalism”) prohibits an agency, to the extent practicable and permitted by law, from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the agency meets the relevant requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

#### **List of Subjects in 24 CFR Part 2002**

Release of information under the Freedom of Information Act.

Accordingly, for the reasons stated above, OIG revises 24 CFR part 2002 to read as follows:

### **PART 2002--AVAILABILITY OF INFORMATION TO THE PUBLIC**

#### **Sec.**

2002.1 Scope of this part and applicability of other HUD regulations.

2002.3 OIG’s overall policy concerning disclosable records and requests for OIG records.

2002.5 How to make a request for OIG records; records produced.

2002.7 OIG processing of requests, multi-tracking, and expedited processing.

2002.9 Proactive disclosures of records.

2002.11 Agency review of records and aggregating requests.

2002.13 Fee schedule, advance payment, and waiving or reducing fees.

2002.15 Time limitations.

2002.17 Authority to release records or duplications.

2002.19 Authority to deny requests for records and form of denial, exemptions, and exclusions.

2002.21 Effect of denial of request.

2002.23 Administrative review.

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 42 U.S.C. 3535(d); Delegation of Authority, 46 FR 2389.

## **§ 2002.1 Scope of this part and applicability of other HUD regulations.**

(a) General. This part contains the regulations of the Office of Inspector General (OIG) that implement the Freedom of Information Act (FOIA) (5 U.S.C. 552). It informs the public how to request records and information from the OIG and explains the procedure to use if a request is denied. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with 24 CFR part 2003 as well as this part. Requests for documents made by subpoena or other demands of courts or other authorities are governed by procedures contained in part 2004 of this chapter. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget. This policy does not create any right enforceable in court.

(b) Applicability of HUD's FOIA regulations. In addition to the regulations in this part, §§ 15.2 and 15.106 of this title apply to the production or disclosure of information in the possession of the OIG, except as limited in paragraph (c) of this section or otherwise expressly stated in this part.

(c) Limited applicability of §§ 15.2 and 15.106 of this title. The OIG has different people and entities involved in the FOIA process than those defined in § 15.2 and these people and entities are specifically identified in this part. For purposes of this part, when the words "HUD" or "Department" are used in § 15.2 or § 15.106, the term means the OIG. The OIG will follow the fee schedule at § 15.106 except as otherwise provided in this part. Where § 15.106 references § 15.103, the OIG reference in this part is § 2002.15.

### **§ 2002.3 OIG's overall policy concerning disclosable records.**

(a) The OIG will administer its FOIA program with a presumption of openness. This policy does not create any right enforceable in court. The OIG will fully and responsibly disclose its identifiable records and information consistent with competing public interests, such as national security, personal privacy, grand jury and investigative secrecy, complainant confidentiality, and agency deliberative process, as are recognized by FOIA and other Federal statutes. The OIG will apply the FOIA exemptions if release could foreseeably harm an interest protected by a FOIA exemption. Release of records will be made as promptly as possible.

(b) The OIG FOIA Public Liaison is the Deputy Counsel to the Inspector General. Requesters who have questions or comments concerning their FOIA request may contact the FOIA Public Liaison at 202-708-1613, or through the FOIA email at FOIARequests@hudoig.gov.

### **§ 2002.5 How to make a request for OIG records; records produced.**

(a) Any request for OIG records must be made in writing. The easiest way to make a FOIA request is electronically through our public website at [www.hudoig.gov](http://www.hudoig.gov). A request may also be made by submitting the written request to The Office of Inspector General; Department of Housing and Urban Development; 451 Seventh Street, SW, Suite 8260; Washington, DC 20410. The envelope should indicate it is a FOIA request. A request for OIG records may also be made in person during normal business hours at any office where OIG employees are permanently stationed.

(b) Each request must reasonably describe the desired record, including the title or name, author, subject matter, and number or date, where possible, so that the record may be identified and located. The more specific the FOIA request for records, the more likely OIG officials will be able to locate the records requested. The request should also include the name, address and telephone number of the requester, the fee category that the requester believes applies to the request, and the form or format in which the requester would like the desired record to be reproduced, if the requester has a preference. In order to enable the OIG to comply with the time limitations set forth in § 2002.15, both the envelope containing a written request and the letter itself should clearly indicate that the subject is a Freedom of Information Act request.

(c) The request must be accompanied by the fee or an offer to pay the fee as determined in § 15.106 of this title and § 2002.13.

(d) The OIG may require information verifying the requester's identity, if the requester requests agency records pertaining to the requester, a minor, or an individual who is legally incompetent. Failure to provide the information when requested will result in the request being found insufficient and closed. It will not prevent the future refiling of the request.

(e) Duplication of available records will be made as promptly as possible. Such duplication can take the form of paper copy, audiovisual materials, or machine-readable documentation (e.g.,

electronic documents on CD, DVD, flash drive, etc.). Records that are published or available for sale will not be reproduced.

(f) The OIG shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format by the office responding to the request.

(g) If the requester makes a request for expedited processing, the request must provide a detailed explanation of the basis for the request. The requester should also include a statement certifying the truth of the circumstances supporting the requester's compelling need. Requests for expedited processing that simply recite the statutory language are generally not granted.

#### **§ 2002.7 OIG processing of requests, multi-tracking, and expedited processing.**

(a) Tracking number. FOIA requests will be logged in the order that they are received and be assigned a tracking number, except as provided in paragraph (c) of this section. A requester should use the tracking number to identify his or her request when contacting the FOIA office for any reason. An acknowledgement of receipt of the request, with the assigned tracking number, will be sent to the requester by the FOIA office.

(b) Multi-track processing--(1) Types of tracks. For requests that do not qualify for expedited processing, the OIG places each request in one of two tracks, simple or complex, based on the amount of work and time involved in processing the request. In doing so, the OIG will consider whether the request involves the processing of voluminous documents or responsive documents from more than one organizational unit. Within each track, the OIG processes requests in the order in which they are received.

(2) Unusual circumstances. Requests for audit work papers are considered complex requests and generally qualify as an unusual circumstance under 5 U.S.C. 552(a)(6)(B)(iii), taking longer than 20 working days to process. Requests for “all” specified records over a span of time, if they are accepted as reasonably describing a specific group of records, are considered complex requests and usually qualify as an unusual circumstance under 5 U.S.C. 552(a)(6)(B)(iii), taking longer than 20 working days to process. Requesters who make requests qualifying as unusual circumstances will be offered an opportunity to narrow the scope of their request or arrange for an alternative time period.

(3) Misdirected requests. For requests that have been sent to the wrong office, the OIG will assign the request within each track using the earlier of either:

- (i) The date on which the request was referred to the appropriate office; or
- (ii) The end of the 10 working-day period in which the request should have been referred to the appropriate office.

(c) Expedited processing. (1) The OIG may take your request or appeal out of normal order if the OIG determines that you have a compelling need for the records or in other cases as determined by the OIG. Any requester may ask for expedited processing at any time. If expedited processing is requested, the OIG will notify the requester within 10 working days whether it will grant expedited processing.

(2) The OIG will grant requests for expedited processing if it finds a compelling need under 5 U.S.C. 552(a)(6)(E). Evidence of a compelling need by a person making a request for expedited processing must be made in a statement certified by such person to be true and correct to the best of such person’s knowledge and belief. A compelling need exists if:

- (i) Your failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;



(ii) You are primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity; or

(iii) Your failure to obtain the requested records on an expedited basis could result in the loss of substantial due process rights.

(3) If the OIG grants the request for expedited processing, the OIG will give the request priority and will process it as soon as practicable.

#### **§ 2002.9 Proactive disclosures of records.**

(a) You may review records that section 552(a)(2) of FOIA requires the OIG to make available to the public in the electronic reading rooms identified in paragraph (b) of this section. That is the preferable method; however, you may also ask to review those documents that are in hardcopy at the Headquarters offices at HUD's Library, 451 Seventh Street, SW, Suite 8141; Washington, DC 20410. This request should be coordinated through Office of Legal Counsel, Office of Inspector General, Suite 8254. Local offices may coordinate local requests for hardcopy reviews.

(b) As required by 5 U.S.C. 552(a)(2), the OIG makes records created on or after November 1, 1996, available through its Electronic FOIA Reading Room, located at <https://www.hudoig.gov/foia>. These records include:

(1) Copies of all records, regardless of form or format that have been released to any person under this part and:

(i) Because of the nature of their subject matter, the agency determines that the records have become or are likely to become the subject of subsequent requests for substantially the same records; or

(ii) Have been requested three or more times.

(2) Report for the preceding fiscal year submitted to the U.S. Attorney General and the Director of the Office of Government Information Services as required by 5 U.S.C. 552(e) and the raw statistical data used in each report. This report will be made available:

(i) Without charge, license, or registration requirement;

(ii) In an aggregated, searchable format; and

(iii) In a format that may be downloaded in bulk.

(c) The OIG also makes other documents, such as audits and semiannual reports, available to the public at <https://www.hudoig.gov/>.

#### **§ 2002.11 Agency review of records and aggregating requests.**

(a) Review of records. Only requesters who are seeking documents for commercial use may be charged for the time the OIG spends reviewing records to determine whether the records are exempt from mandatory disclosure. Charges will be assessed only for the initial review; i.e., the review undertaken the first time the OIG reviews a particular record or portion of a record to apply an exemption. The OIG will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Review time will be assessed at the same rates established for search time in §§ 2002.13 and 15.106 of this title.

(b) Aggregating requests. (1) The OIG may aggregate multiple requests in cases where unusual circumstances exist and the OIG determines that:

(i) Certain requests from the same requester or from a group of requesters acting in concert actually constitute a single request; and

(ii) The requests involve clearly related matters.

(2) Aggregation of requests for this purpose will be conducted independent of aggregation of requests for fee purposes under § 15.106(h) of this title.

### **§ 2002.13 Fee schedule, advance payment, interest charges, and waiving or reducing fees.**

The OIG will charge for processing requests under the FOIA in accordance with § 15.106 of this title, except where those provisions conflict with provisions of this part; more specifically, where § 15.106 references §15.103 of this title replace such reference with §2002.15.

### **§ 2002.15 Time limitations.**

(a) General. Upon receipt of a request for records, the appropriate Assistant Inspector General or an appointed designee will generally make a determination whether to comply with a FOIA request within 20 working days. The Assistant Inspector General or designee will immediately notify the requestor in writing of the determination and the reason(s) for such determination and the right of the person to request assistance from the FOIA Public Liaison. The 20-day period will begin on the day the request is received by the OIG, but in any event not later than 10 working days after the request is received by any component designated to receive FOIA requests, and after any fees or advance payment of fees under § 2002.13 has been made.

(b) Scope of responsive records. In determining which records are responsive to a request, an agency ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the agency must inform the requester of that date. A record that is excluded

from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) is not considered responsive to a request.

(c) Unusual circumstances. Under unusual circumstances, as specified in this paragraph (c), the OIG may extend the time period for processing a FOIA request. In such circumstances, the OIG will provide the requester with written notice setting forth the unusual circumstances for the extension and the date on which a determination is expected to be made. This date will not exceed 10 working days beyond the general time established in paragraph (a) of this section. If processing a request would require more than 10 working days beyond the general time limit established in paragraph (a) of this section, the OIG will offer the requester an opportunity to reduce or limit the scope of the request in order to allow the OIG to process it within the extra 10-day working period or arrange an alternative time period within which the FOIA request will be processed. To aid the requester, the OIG shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the OIG, and notify the requester of the right of the requester to seek dispute resolution services from the Office of Government Information Services. Unusual circumstances mean that there is a need:

(1) To search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) To search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request (e.g. audit work papers); or

(3) For consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more offices of the Office of Inspector General having a substantial interest in the subject matter of the request.

**§ 2002.17 Authority to release records or duplications.**

Any Assistant Inspector General or an appointed designee is authorized to release any record (or duplication) pertaining to activities for which he or she has primary responsibility, unless disclosure is clearly inappropriate under this part. No authorized person may release records for which another officer has primary responsibility without the consent of the officer or his or her designee.

**§ 2002.19 Authority to deny requests for records and form of denial, exemptions, and exclusions.**

(a) Process for denying requests. An Assistant Inspector General or the Counsel to the Inspector General, or their designees, may deny a request for a record. Any denial will:

- (1) Be in writing;
- (2) State simply the reasons for the denial;
- (3) Provide an estimate of the volume of records or information withheld, when appropriate, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;
- (4) Identify the person(s) responsible for the denial by name and title;
- (5) Provide notice of the right of the requester to appeal to the Deputy Inspector General, within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination, consistent with § 2002.23; and
- (6) Provide notice of the right of the requester to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services.

(b) Denying requests generally. The OIG shall withhold information only if the OIG reasonably foresees that disclosure would harm an interest protected by an exemption as provided in this section, or disclosure is prohibited by law. The OIG will consider whether partial disclosure of information is possible whenever the OIG determines that a full disclosure of a requested record is not possible and will take reasonable steps necessary to segregate and release nonexempt information. Nothing in this section requires disclosure of information that is otherwise prohibited from disclosure by law or otherwise exempted from disclosure as provided in this section.

(c) FOIA exemptions. The FOIA contains nine exemptions (5 U.S.C. 552(b)) that authorize agencies to withhold various records from disclosure, and two exclusions to the statute that may be used by the OIG. With regard to the records normally requested, the OIG generally applies the exemptions and exclusions as follows:

(1) Classified documents. Exemption 1 (5 U.S.C. 552(b)(1)) protects classified national defense and foreign relations information. The OIG seldom relies on this exception to withhold documents. However, where applicable, the OIG will refer a request for records classified under Executive Order 13526 and the pertinent records to the originating agency for processing. The OIG may refuse to confirm or deny the existence of the requested information if the originating agency determines that the fact of the existence of the information itself is classified.

(2) Internal agency rules and practices. Exemption 2 (5 U.S.C. 552(b)(2)) protects records relating to internal personnel rules and practices.

(3) Information prohibited from disclosure by another statute. Exemption 3 (5 U.S.C. 552(b)(3)) protects information that is prohibited from disclosure by another Federal law. Some investigative records contain information that could reveal grand jury proceedings, which are protected from disclosure by Federal Rule of Criminal Procedure 6(e). Section 7 of the Inspector General Act of 1978

prohibits the OIG from disclosing the identity of employees who make protected disclosures. The OIG generally will not disclose competitive proposals prior to contract award, competitive proposals that are not set forth or incorporated by reference into the awarded contract, (see 41 U.S.C. 4702), or, during the selection process, any covered selection information regarding such selection, either directly or indirectly (see 42 U.S.C. 3537a).

(4) Commercial or financial information. Exemption 4 (5 U.S.C. 552(b)(4)) protects trade secrets and commercial or financial information obtained from a person that is privileged and confidential. The OIG frequently obtains this information through its audits. The OIG will process the release of this category of information pursuant to Executive Order 12600 and give notice to the affected business and an opportunity for the business to present evidence of its confidentiality claim. If the OIG is sued by a requester under the FOIA for nondisclosure of confidential business information, the OIG expects the affected business to cooperate to the fullest extent possible in defending such a decision.

(5) Certain interagency or intra-agency communications. Exemption 5 (5 U.S.C. 552(b)(5)) protects interagency or intra-agency communications that are protected by legal privileges, such as the attorney-client privilege, attorney work-product privilege, or communications reflecting the agency's deliberative process. These communications may include communications with the Department of Justice and with HUD. The deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

(6) Personal privacy. Exemption 6 (5 U.S.C. 552(b)(6)) protects information involving matters of personal privacy. This information may be found in personnel, medical, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Names, addresses, telephone numbers, and email addresses of persons identified in audits or complaints

generally will not be disclosed. The OIG has learned through experience that some of its employees (i.e. Hotline employees) will be harassed if their identities are known, and the OIG will protect the identities of these employees. As a law enforcement agency, the OIG finds individuals generally have a heightened privacy interest for not having their identities associated with the OIG.

(7) Law enforcement records. Exemption 7 (5 U.S.C. 552(b)(7)) protects certain records or information compiled for law enforcement purposes. This exemption protects records where the production could reasonably be expected to interfere with enforcement proceedings. The protection of this exemption also encompasses, but is not limited to, information in law enforcement files that could reasonably be expected to constitute an unwarranted invasion of personal privacy; the names of confidential informants; and techniques and procedures for law enforcement investigations, or guidelines for law enforcement investigations if such disclosure could reasonably be expected to risk circumvention of the law. It is the policy of the OIG in responding to all FOIA requests for investigative records pertaining to specifically named individuals to refuse to confirm or deny the existence of such records. Lacking the subject individuals consent, proof of death, an official acknowledgement of an investigation, or an overriding public interest, even to acknowledge the existence of such records could reasonably be expected to constitute an unwarranted invasion of personal privacy.

(8) Supervision of financial institutions. Exemption 8 (5 U.S.C. 552(b)(8)) protects information relating to the supervision of financial institutions. It is unlikely that the OIG will have these documents.

(9) Wells. Exemption 9 (5 U.S.C. 552(b)(9)) protects geological information on wells. It is unlikely that the OIG will have these documents.



(d) FOIA exclusion. Some law enforcement records are excluded from the FOIA. 5 U.S.C. 552 (c)(1) permits a law enforcement agency to exclude a document from the FOIA if there is reason to believe that:

(1) The subject of the investigation or proceeding is not aware of its pendency; and

(2) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, in which case the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the FOIA. Section 552(c)(2) of FOIA allows the exclusion of informant records, unless the existence of the informant has been officially confirmed.

#### **§ 2002.21 Effect of denial of request.**

Denial of a request shall terminate the authority of the Assistant Inspector General or his or her designee to release or disclose the requested record, which thereafter may not be made publicly available except with express authorization of the Inspector General, Deputy Inspector General, or Counsel to the Inspector General.

#### **§ 2002.23 Administrative review.**

(a) Review is available only from a written determination denying a request for a record and only if a written request for review is filed within 90 days after issuance of the written determination. If mailed, the requester's letter of appeal must be postmarked within 90 calendar days of the date of the letter of determination. If the letter of appeal is transmitted electronically or by a means other than the United States Postal Service, it must be received in the appropriate office by the close of business

on the 90th calendar day after the date of the letter of determination. Before seeking court review of an adverse determination, a requester must exhaust their administrative remedies under this section.

(b) A review may be initiated by sending a request for review to the Office of Inspector General; Department of Housing and Urban Development; 451 Seventh Street, SW, Room 8256; Washington, DC 20410 or to FOIArequests@hudoig.gov. In order to enable the OIG to comply with the time limitations set forth in § 2002.17, both the envelope containing the request for review and the letter itself should clearly indicate that the subject is a Freedom of Information Act request for review. Each request for review must contain the following:

- (1) A copy of the original request;
- (2) A copy of the written denial; and
- (3) A statement of the circumstances, reasons, or arguments advanced in support of disclosure of the original records requested.

(c) Review will be made promptly by the Deputy Inspector General, or designee, on the basis of the written record. The OIG will decide an appeal of a denial of a request to expedite processing of a FOIA request within 10 working days of receipt of the appeal. The OIG will make a determination on all other appeals within 20 working days of receipt, unless unusual circumstances require the OIG to extend the time for an additional 10 working days.

(d) The time of receipt for processing of a request is the time it is received by the Inspector General. If a request is misdirected by the requester and is received by one other than the Inspector General, the OIG official who receives the request will forward it promptly to the Inspector General and will advise the requester about the delayed time of receipt.

(e) The decision after review will be in writing, will constitute final agency action on the request, and, if the denial of the request for records is in full or in part upheld, the Inspector General

will notify the person making the request of his or her right to seek judicial review under 5 U.S.C. 552(a)(4).

(f) Adverse decisions will include the name and contact information of dispute resolution services that offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation.

Dated: January 18, 2018.

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Helen M. Albert, Acting Inspector General.

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